

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.17834 of 1998

Between:

M/s. Hindustan Antibiotics Ltd., Pimpri, Pune - 411018

rep. by its Personal Manager,
P.K. Barpanda, S/o P.N. Barpanda, resident of Pimpri, Pune.

..... PETITIONER

AND

1 The Government of Andhra Pradesh,

rep. by its Secretary, Labour Dept, Secretariat, Hyderabad.

2 The Authority under A.P. Shops and Establishments Act, 1998

and Asst.Commissioner of Labour-I Circle,
Guntur.

3 D. Krishnamohan, S/o. Srinivasaiah, D.No.17-420C,

Santhinivas, NVR Road,
Nehrunagar, Madanapalli – 517 325

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction particularly one in the nature of Writ of Certiorari after calling for records relating to order in S.A.Case No.12/94, dt. 22-4-98 on the file of the Authority under A.P., Shops and Establishments Act, 1998 and Assistant Commissioner of Labour, I Circle, Guntur and quash the same.

Counsel for the Petitioner: Mr.M.PANDURANGA RAO

Counsel for the Respondents 1&2: G.P. for Labour

Counsel for the 3rd respondent: Mr.D.V.Sitarama Murthy

The Court made the following :

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ORDER:

This writ petition is filed challenging the order passed by the first appellate authority under the A.P. Shops and Establishments Act,1988 (for short ‘the Act’) wherein the order of removal passed by the disciplinary authority was set aside under Section 48(2) of the Act being contrary to the provisions of Section 25-F of the Industrial Disputes Act,1947 and the 3rd respondent herein was directed to be reinstated into service with full back wages etc.

The main thrust of the writ petitioner-management is that the provisions of the Act are not applicable to its establishment and the very petition was not maintainable before the authority under Section 48 of the Act. Since the jurisdictional aspect is involved apart from the onerous condition imposed for the purpose of filing second appeal, this writ petition is directly filed without availing of the second appeal remedy under Section 48(3) of the Act.

There is not much dispute as to the facts of the employment of the respondent-employee with the petitioner-management and his removal from services without following the provisions of Section 25-F of the Industrial Disputes Act,1947.

Learned counsel for the petitioner heavily relied upon the Judgment of the apex Court in **HINDUSTAN ANTIBIOTICS v. WORKMEN** and submitted that the issue of jurisdiction is no more *res integra* and drawn attention of this Court to paragraph-2, which reads as under:

“2. The Hindustan Antibiotics Limited, hereinafter called "the Company", is a Government undertaking and is incorporated under the Indian Companies Act. Its registered office is at Pimpri, Poona District, State of Maharashtra, and its main business is the manufacture and distribution in bulk of antibiotics like penicillin, streptomycin, etc. The entire equity capital of the Company is held by the President of India and his nominees, and the entire Board of Directors of the Company is nominated by him. The conduct of the business of the Company is subject to the directives issued from time to time by the President of India and its accounts are audited by the auditors appointed by the Central Government on the advice of the Comptroller and Auditor-General of India. Service conditions of the workmen and other matters are subject to the approval of the President of India. The annual report of the

working of the Company and its affairs along with the Audit Report has to be placed before the Parliament. There are no shareholders other than the Central Government or its nominees, with the result that the dividends declared by the Company entirely go to the coffers of the State, but the profits are ploughed back into the industry or kept as reserve for future requirements. In short, though the Company is a limited one and, therefore, has a distinct corporate existence, it is in effect financed entirely from the funds of the Central Government.”

Learned counsel further contended that in view of the onerous condition stipulated for the purpose of filing a second appeal under Section 48(3) of the Act, i.e. to deposit the entire amount of back wages as ordered by the appellate authority under Section 48(2) of the Act, the second appeal provision cannot be said to be an efficacious alternative remedy as held by this Court in **J.M.BAXI & CO. v. COMMISSIONER OF CUSTOMS, NEW KANDLA** which reads as under:

“3. Normally, the High Court ought not to interfere in exercise of its jurisdiction under Article 226 when adequate alternative remedy is available, but in the special facts of this case when the demand was raised and the same had been challenged on the ground that it was barred by time and where the demand is nearly of 46 lakhs of rupees which will have to be deposited before any appeal can be filed, we are of the opinion that the High Court ought to have exercised its jurisdiction and determined the questions which were raised in the writ petition on merits. In dealing with the contentions raised by the appellant, the High Court would necessarily have to consider the contentions of the respondents as well.”

Learned counsel for the petitioner also contended that the service conditions of the petitioner are governed by the Sales Promotion Employees (Conditions of Service) Act, 1976 and the provisions of the A.P. Shops and Establishments Act, 1988 are not applicable to the medical representatives {since the availability of the Sales Promotion Employees (Conditions of Service) Act was not brought to the notice of the President of India at the time of giving assent to the A.P. Shops and Establishments Act}. Therefore, a question also falls for consideration of this Court as to whether it is open to the Authority under the Act to have condoned the delay of 13 years occurred on the part of the employee in approaching the authority and whether the same is maintainable ?

Hindustan Antibiotics Limited was established in the year 1954 and is a Government of India undertaking. All the shares are owned by the Government of India and as per the bye-laws and Memorandum of Association, the entire share capital is owned by the Government of India. The accounts of the company are audited by the Auditors appointed by the Central Government on the advice of the Comptroller and Auditor General of India. All the Board level appointments are made at the instance

of the Union of India and it is owned and controlled by the Central Government. Further, the petitioner-organization is under consideration of BIFR as a sick industry and the accumulated losses in aggregate comes to Rs.8317.31 lakhs. As per Section 22 of the Sick Industrial Special Companies (Special Provisions) Act, 1985, if an industry is declared as sick and is under preparation or consideration of a scheme to revive the industry, no proceedings under any law shall lie or proceeded with further except with the consent of the Board. As such, proceedings before the Authority were not maintainable and the Authority has ignored all these facts. Learned counsel states that the appellate authority may not be able to appreciate the all these questions as to jurisdiction of the authority, the nature of the industry being sick and the applicability of the provisions of SICA to the petitioner, apart from the fact that the appeal remedy is not an efficacious alternative remedy, as it is being onerous on the part of the petitioner.

Sri D.V.Sitaram Murthy, learned counsel appearing for the respondent-employee contended that the contentions raised by the petitioner as to jurisdiction and also pendency of the proceedings before the BIFR cannot be reagitated by the petitioner. At the earliest point of time, when the petitioner approached the authority under the Act, W.P.No.28560 of 1995 was filed before this Court raising all these questions of law and facts. This Court by an order dated 4-9-1996 disposed of the said writ petition with the following directions:

“Under these circumstances, I am not inclined to interfere with the proceedings, which are pending before the authority. Therefore, I am inclined to dispose of the writ petition with a direction that the authority shall proceed with the matter in accordance with the provisions of A.P.Shops & Establishments Act, 1988 and pass appropriate orders, within a period of four weeks from the date of receipt of copy of this order.

The learned counsel for the Management also submits that the Authority has no jurisdiction inasmuch as it is an exempted establishment under the provisions of the Act. It is open for the Management to make all the possible objections before the authority and the same shall be decided finally without rendering a finding on preliminary issues. So also, it is open to the respondent-workman to place his contentions before the authority, which shall be decided by the Authority in accordance with law.

It is further made clear that it is open for the Management to agitate the question of condonation of delay before the second appellate authority in the event if the proceedings go against the management on merits.”

Further, being aggrieved by the said order, the management had filed W.A.No.1500

of 1996, which was dismissed on 16-1-1997 confirming the Judgment of the learned single Judge observing as under:

“We do not think any interference in the impugned judgment is warranted merely because the appellants herein objected to the maintainability of the proceedings before the competent authority under the Andhra Pradesh Shops and Establishments Act and wanted that maintainability should be decided as a preliminary issue. Learned single Judge has rightly dismissed the writ petition, as, ordinarily, maintainability as well as merit should be decided simultaneously. Some arguments are raised before us on the ground of inordinate delay and limitation. Delay and limitation are always mixed questions of fact and law. They are never decided only by reference to the extremities of the period elapsed, but are decided also on the basis of the lack of diligence on the part of the person seeking the remedy.”

Therefore, it does not lie in the mouth of the petitioner to agitate the same grounds again and again before this Court by filing Writ Petition at every stage to scuttle the process of adjudication before the authorities in the guise of non-maintainability of appeal and the jurisdiction of the Authority to deal with the same. After the writ appeal was disposed of, the matter was taken up on merits and the authority under Section 48(2) of the Act passed the impugned order, which reads as under:

“Hence, I hold that the action of the respondent is invalid and he violated the procedure as laid down under Rule-20 of the APS & E Rules, 1968.

Therefore, I direct the respondent to reinstate the appellant into service with full back wages and other attendant benefits, within 30 days from the date of receipt of this order.”

It is not fair on the part of the mighty management (petitioner) to raise the same questions and file this writ petition when they were relegated to the authority and raise all the aspects before it. In fact, the petitioner raised all these questions of law and fact before the authority and the authority considered the same and passed the impugned order. Once this is so, the only course left open for the petitioner-management is to carry the matter in appeal as available under Section 48(3) of the Act. Having raised the question of jurisdiction during the pendency of the proceedings before the appellate authority and having relegated by this Court to pursue the matter before the authority concerned and when the authority takes a final decision, it is not open for the petitioner to again approach this Court and file the present writ petition on the very same grounds without availing the remedy as

provided under Section 48(3) of the Act and inviting the judgment from this Court. Of course, it is open for the petitioner to challenge the Order of the first appellate authority on all the grounds raised here and in the earlier writ petitions before the appellate authority. Petitioner-management has adopted an unfair attitude against the respondent-employee and it may amount to, in a way, abuse of process of law only to harass the respondent-employee.

Therefore, the principal question that arises for consideration in this writ petition is as to whether the petitioner-management having suffered the judgment of this Court in W.P.No.28560 of 1995 which was confirmed in W.A.No.1500 of 1996 and having raised all the aspects as to jurisdiction etc., before the appellate authority and the appellate authority deciding the matter finally, is it open for the petitioner to approach this Court directly by-passing the statutory appeal provided under Section 48(3) of the Act ?

Insofar as the jurisdiction of first appellate authority is concerned, the Management already filed W.P.No.28560 of 1995, which was dismissed by this Court on 4-9-1996 and the management was relegated to the authority to work out its remedies. The said Order was confirmed by a Division Bench of this Court in W.A.No.1500 of 1996, dated 16-1-1997. Therefore, I am of the considered opinion that the mighty management-petitioner cannot approach this Court at every stage and raise the same question as to maintainability of the appeal under Section 48(1) of the Act and jurisdiction of the appellate authority. At the earliest point of time, when a writ petition was filed, the management was relegated to the authority under the Act and since it suffered an order, the management was supposed to go before the second appellate authority under Section 48(3) of the Act. Instead of going in second appeal, the management has come up before this Court by way of present writ petition again raising the same question of jurisdiction and further on the question of onerous condition in the entertainment of appeal under Section 48(3) of the Act. In this backdrop, it may be necessary to notice that, in fact, the respondent-employee had filed W.P.No.879 of 1980, which was dismissed for default by this Court on 1-7-1985. Thereafter, the respondent-employee approached the Labour Court, Hyderabad by way of filing I.D.No.442 of 1987, in which the petitioner-management filed a detailed counter affidavit stating that the 3rd respondent's employment would not come within the meaning of Sales Promotion Employees (Conditions of Service) Act, 1976 and as such, none of the provisions of the Industrial Disputes Act, 1947 are

applicable in relation to the personnel dismissed from service and consequently, the 3rd respondent has no *locus standi* to invoke the provisions of the Industrial Disputes Act, 1947 and the Labour Court had no jurisdiction to entertain the dispute. The said I.D. was, therefore, dismissed as not maintainable. After filing an appeal under Section 48(1) of the Act before the Assistant Commissioner of Labour-I (Authority under the A.P. Shops and Establishments Act), Guntur, the management took a stand that its establishment is under the control and supervision of the Central Government and as such, it is exempted under Section 73 of the Act and, therefore, the appeal is not maintainable and liable to be dismissed *in limine*. Thereafter, the petitioner filed writ petition and writ appeal as stated above. The Authority, while dealing with the appeal under Section 48(1) of the Act, held that petitioner herein failed to establish the existence of deep and pervasive control of the Central Government over the establishment and, therefore, it has jurisdiction over the establishment of the petitioner. Further, it is curious to note that in the present writ petition, a question is raised that whether, after promulgation of Sales Promotion Employees (Conditions of Service) Act, 1947, any dispute under the A.P. Shops and Establishments Act with reference to Medical Representatives is maintainable? Therefore, the management cannot play hide and seek and take pleas as suits to it raising the very same point at every stage and trying to stall the proceedings, which is nothing but abuse of process of law and delay tactics to scuttle the interest of an employee, who is a helpless being and cannot fight with the mighty management like the petitioner. Allowing the management-petitioner to question the aspect of jurisdiction as to maintainability of the very appeal before the appellate authority, which was once considered by this Court would amount to allowing the management to by-pass the second appeal provision as provided under the Act. Of course, it is open for the petitioner-management to raise all these questions of law and facts even before the second appellate authority and if it is aggrieved by the decision of the said authority, it can file a regular writ petition before this Court. But, the petitioner shall not be allowed to raise the same points again and again at every stage. This may amount to allowing the petitioner to abuse the process of law.

The other question raised by the learned counsel for the petitioner that the condition laid down under Section 48(3) of the Act as to deposit of the amount as awarded by the Authority at the time of filing second appeal is onerous, cannot be accepted. The decisions relied upon by the learned counsel for the petitioner are not much relevant

to be considered here. All the judgments cited now were available even at the time of disposal of the earlier writ petition and writ appeal filed by the management. A second appeal is maintainable only when the entire amount of back wages, which was ordered by the first appellate authority is deposited; but, that does not mean that the employee is entitled for withdrawal of the amount so deposited while filing the appeal under Section 48(3) of the Act. This is not a case where some hundreds of employees are involved. There is only one employee, who is involved in this case and as such, the condition to deposit the amount awarded by the first appellate authority before the second appellate authority under Section 48(3) of the Act cannot be said to be onerous.

This being the position of facts in this case, whether the petitioner-establishment is exempted from the provisions of the Act by virtue of Section 73 thereof and the decisions rendered in **C.V. RAMAN v. MANAGEMENT OF BANK OF INDIA** and **HINDUSTAN ANTIBIOTICS** case (1 supra) are applicable to this case need not be gone into at this stage. All these questions can be agitated by the petitioner before the second appellate authority under Section 48(3) of the Act and also before this Court by way of filing a writ petition, if necessary, against the order to be passed by the second appellate authority under Section 48(3) of the Act.

For all the above reasons, the writ petition is dismissed giving liberty to the petitioner to approach the second appellate authority under Section 48(3) of the Act and on filing such an appeal, the appellate authority shall entertain the same without raising any objection as to the limitation. The observations made hereinabove will not come in the way of the second appellate authority in deciding the matter on merits. There shall be no order as to costs.

11th October, 2004

prk

After the Judgment is pronounced, learned counsel for the petitioner submits that some amounts, in pursuance of the Award of the appellate authority have already been paid to the respondent-employee. If that is so, the amounts paid to the respondent-employee shall be given credit to.

11-10-2004

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary, Labour Department,

Government of Andhra Pradesh,

Labour Dept, Secretariat, Hyderabad.

2 The Authority under A.P. Shops and Establishments Act, 1988

and Asst.Commissioner of Labour-I Circle,
Guntur.

3. 2CCs to G.P. for Labour, High Court Buildings, Hyderabad (OUT)

4. 2CD copies